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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,204	04/22/2004	David Jon Haan	35678-604C01US	5533

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EXAMINER	
SHAY, DAVID M	

ART UNIT	PAPER NUMBER
3769	

MAIL DATE	DELIVERY MODE
06/12/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/829,204	HAAN ET AL.	
	Examiner	Art Unit	
	david shay	3769	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED March 1, 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *none*.
   Claim(s) objected to: *none*.
   Claim(s) rejected: *1-12,15-30,33-43,46 and 47*.
   Claim(s) withdrawn from consideration: *none*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/david shay/
Primary Examiner, Art Unit 3769

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the FInality of the previous office action was improper because, since the claims submitted with the RCE had been amended compared to the claims that were finally rejected prior to the RCE, the claims were to a different invention. the examiner must respectfully disagree. In each instance the claims were to " A device for producing laser treatment for medical application on the human body" and "A method of treating a human body". The mere fact that additional limitation were added to these claims does not make them a different invention under MPEP 706.07(b). Further, if the claims submitted after the RCE were in fact to a different invention, the examiner would have not examined the claims, noting that a diffent invention had been elected by original presentation. With regard to the art rejections, applicant argues that neither Kittrell et al nor Fisher et al suggests "selecting a graded index optical fiber having a predetermined graded index profile and a predetermined langth selected to modify the electromagnetic radiation..." However, a carfule reading of applicant's originally filed disclosure reveals that "the present invention may be designed and implemented including, but not limited to, a parabolic like profile, a pyramid like profile and others" (see paragraph [0018], last sentence) and that a "A substantially Gaussian or Lorentzian intensity may be achieved provided that the length of the GRIN fiber 100 is above a certain threshold" (see the originally filed disclosure, parapgraph [0019] the penultimate sentence); and that for "the present invention the GRIN fiber 212 has a length of at least 20 centimeters and the output radiation at the GRIN fiber's 212 exit end 214 is approximately Gaussian" (see the originally filed disclosure, paragraph [0032]. Applicant's assertions to the contrary notwithstanding, the teaching of Kittrell et al to provide a fiber od .5 to 2 meters long (500 centementers to 2000 centementers, see column 7, lines 54-55, as set forth on page 3 of the Final rejection) is clealry both a predetermined length and a length which is greater than 20 centemeters. Further the teaching that the fibers may be GRIN fibers (see page 3 of the FInal rejection and column 13, line 10-11, of Kittrell et al) clearly falls within the recitation of premissible GRIN configurations set forth in paragrraph [0018] of the originally filed disclosure, references above. Thus the only difference here appaers to be the intent on the part of applicant to produce the particular intensity distribution of output radiation. However, as Kittrell et al, perform all these steps as well, the distribution will be produces, regardless of Kittrell et al's intent to do so, and the claimed method is still anticipated thereby. The reference to Fisher is also anticipatory of the claims even as amended, since Fisher et al recognize the production of the gaussian distribution, although this is a less proferred embodicment that that prduced by the cap due to the requirments for cleving the fiber end. THis however, does not remove fromt eh prior art ethe knowledge expressed by Fisher that the production of the gaussian is achievable by the bare fiber, as expressly disclosed thereby. Thus the claims as amended are still rejectable under the references and combinations as applied to these claims before the uinstant amendments